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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/611,332	07/01/2003	Francis T. Azzarello	USCC 8057US	3768
1688	7590	01/23/2006	EXAMINER	
POLSTER, LIEDER, WOODRUFF & LUCCHESI 12412 POWERSCOURT DRIVE SUITE 200 ST. LOUIS, MO 63131-3615			LHYMN, EUGENE	
			ART UNIT	PAPER NUMBER
			3727	

DATE MAILED: 01/23/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/611,332

Applicant(s)

AZZARELLO, FRANCIS T.

Examiner

Eugene Lhymn

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-4, 6-22, 24 and 25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4, 6-22, 24 and 25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11 November 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 3, 7, 8, and 9 recite the limitations "the base," "the base and sidewalls," "the flattened aspect," "the flattened sides," and "the base," respectively. There is insufficient antecedent basis for this limitation in the claim. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-2 are rejected under 35 U.S.C. 102(b) as being anticipated by Drogos (US 5027973). With respect to claim 1, Drogos discloses the following:

- A container body having a base and sidewall
- A plastic molded bail, integrally molded with the container body, having bosses integrally molded therewith, the bosses being spaced less than 170 degrees apart (Fig. 3)

Moreover, it is well established that patent drawings do not define the precise proportions of the elements and may not be relied on to show particular sizes if the

specification is completely silent on the issue.”). However, the description of the article pictured can be relied on, in combination with the drawings, for what they would reasonably teach one of ordinary skill in the art. In re Wright, 569 F.2d 1124, 193 USPQ 332 (CCPA 1977).

With respect to claim 2, Drogos discloses the bosses being spaces approximately 140 degrees, wherein the angular measurement was taken via measurement techniques available to one of ordinary skill in the art. Specifically, the angular measurement was taken from the innermost perpendicular edges of the bosses extending from the container sidewall.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1 is rejected under 35 U.S.C. 103(a) as being obvious over Drogos. With respect to claim 1, Drogos discloses the claimed invention except for the spacing of the bosses being less than 170 degrees apart. It would have been an obvious matter of design choice to configure the spacing of the bosses to be less than 170 degrees apart since such a modification would have involved a mere change in the size of a

component. A change in size is generally recognized as being within the level of ordinary skill in the art. In re Rose, 105 USPQ 237 (CCPA 1955).

5. Claims 2 is rejected under 35 U.S.C. 103(a) as being obvious over Drogos. With respect to claim 3, Drogos discloses the claimed invention except for the spacing of the bosses being approximately 140 degrees apart. It would have been an obvious matter of design choice to configure the spacing of the bosses to be approximately 140 degrees apart since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. In re Rose, 105 USPQ 237 (CCPA 1955).

6. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Drogos in view of Schaper et al. (US 6443325 B1). With respect to the claim, Drogos discloses the claimed invention except for the base of the bail having a uniform thickness, and the base and sidewalls of the bail having substantially the same thickness as the container sidewall, wherein the general shape of the bail cross-section is channel-like. However, Schaper et al. teaches a container and bail wherein the base of the bail has a uniform thickness, and the base and sidewalls of the bail having substantially the same thickness as the container sidewall, as shown in Fig. 3b. Modifying the shape of the bail cross-section to be channel-like strengthens the bail and having the thicknesses equal as such simplifies manufacturing processes. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the bail cross section

of Drogos to be channel-shaped with the base and sidewalls of the bail being of equal thickness in addition to the container sidewall, as taught by Schaper et al., so as to strengthen the bail and simplify manufacturing processes.

7. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Drogos in view of Schaper et al. as applied to claim 3 above, and further in view of Gall (US 4357042). With respect to the claim, Drogos, as modified above, discloses the claimed invention except for the cross-section of the bail transforming to a substantially flattened shape at a point substantially equidistant from the side bosses. However, Gall teaches a bail wherein the bail transforms to a substantially flattened shape at a point substantially equidistant from the side bosses, as shown in Fig. 1. Having the bail cross-section configured as such provides a more ergonomic gripping surface. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the bail cross section of Drogos to transform to a substantially flattened shape at a point substantially equidistant from the side bosses as taught by Gall so as to provide a more ergonomic gripping surface.

8. Claims 6, 7, 17-19, and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Drogos in view of Andersen (US 4380304). With respect to claim 6, Drogos discloses the claimed invention except for tabs being integrally formed on the bail and on the container body, wherein the tabs separate from the container body and bias against the flange in order to extend past the flange when the bail is lifted to a

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vertical position. However, Andersen teaches a bail and container system having tabs integrally formed on the bail and on the container body, wherein the tabs separate from the bail and bias against the flange in order to extend past the flange when the bail is lifted to a vertical position. It is noted that the opposite configuration is taught by Andersen, however, it would have been obvious to one having ordinary skill in the art at the time the invention was made to configure the tab to break off the container body, since it has been held that a mere reversal of the essential working parts of a device involves only routine skill in the art. [ In re Einstein, 8 USPQ 167.]

With respect to claim 7, Drogos discloses the claimed invention except for the bail having a flattened portion of the bail extending horizontally when the bail is lifted. However, Andersen teaches a bail and container system wherein the bail has a flattened portion that extends horizontally when the bail is lifted, wherein the flat portion is the underside and top side of the bail 40. Having the bail configured as such provides a convenient gripping arrangement. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to configure the bail of Drogos to have a flattened portion as taught by Andersen so as to provide a convenient gripping arrangement.

9. With respect to claims 9 & 17, Drogos discloses the claimed invention except for the bail being attached to the can by tabs formed in the mold, wherein the tabs are broken off from the can body. However, Andersen teaches a bail and container system wherein the bail is attached to the can by tabs formed in the mold, as shown in Fig. 4, items 42 and 44, wherein the tabs are broken off the bail. Having tabs as such

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simplifies and improves the molding process (Col. 3, Lines 20-25). It is noted that the opposite configuration is taught by Andersen, however, it would have been obvious to one having ordinary skill in the art at the time the invention was made to configure the tab to break off the container body, since it has been held that a mere reversal of the essential working parts of a device involves only routine skill in the art. [ In re Einstein, 8 USPQ 167.]

With respect to claims 10 & 18, Drogos discloses the bosses being spaced less than 170 and 180 degrees apart, respectively.

With respect to claims 11 & 19, Drogos discloses the bossed being spaced approximately 140 degrees apart, wherein the angular measurement was taken via measurement techniques available to one of ordinary skill in the art.

With respect to claim 25, Drogos discloses the claimed invention except for the tabs being integrally formed on the bail, wherein the tabs bias against the flange in order to extend past the flange when the bail is lifted to a vertical position. However, Andersen teaches a bail and container system having tabs integrally formed on the bail, wherein the tabs bias against the flange in order to extend past the flange when the bail is lifted to a vertical position. Having tabs as such simplifies and optimizes the manufacturing process. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to add tabs to the container and bail system of Drogos as taught by Andersen so as to simplify and optimize manufacturing processes.



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10. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Drogos in view of Andersen as applied to claim 7 above, and further in view of Letica (US 5875913). With respect to the claim, Drogos, as modified above, discloses the claimed invention except for the bail having grooves formed on the flattened sides of the bail. Nonetheless, Letica teaches a container bail system having grooves formed on the bail in order to improve gripping. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to add grooves to a flat side of the bail of Drogos as taught by Letica so as to improve gripping.

11. Claims 12-13 and 20-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Drogos in view of Andersen as applied to claims 9 and 17 above, and further in view of Schaper et al. (US 6443325 B1). With respect to claims 12 & 20, Drogos, as modified above, discloses the claimed invention except for the bail being a U-shaped channel and the base and sidewalls having a constant thickness. However, Schaper et al. teaches the bail being a U-shaped channel and the base and sidewalls having a constant thickness, which strengthens the bail. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to configure the bail cross-section of Drogos to be a channel with constant thickness as taught by Schaper et al. so as to strengthen the bail.

With respect to claims 13 and 21, Drogos, as modified above, discloses the claimed invention except for the base and sidewalls of the bail having the same thickness as the sidewall of the container. However, Schaper et al. teaches a

container-bail system wherein the base and sidewalls of the bail have the same thickness as the sidewall of the container (Fig. 3b), which subsequently simplifies manufacturing processes. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to configure the base of sidewalls of the bail of Drogos, as modified above, to be the same thickness as the corresponding container as taught by Schaper et al. so as to simplify manufacturing processes.

12. Claims 14-16, 22, and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Drogos in view of Andersen and Schaper et al. as applied above, and further in view of Gall (US 4357042). With respect to claims 14 & 22, Drogos, as modified above, discloses the claimed invention except for the bail transforming from a channel-shape to a flattened shape at a point equidistant from the bosses. Nonetheless, Gall teaches a container bail system wherein the bail transforms from a channel-shape to a flattened shape at a point equidistant from the bosses (Fig. 1). Having a flattened portion as such provides an ergonomic improvement. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the bail cross section of Drogos, as modified above, to have a flattened portion as taught by Gall so as to improve the ergonomics of the container.

With respect to claim 15, Drogos, as modified above, discloses the claimed invention except for the flattened aspect of the bail extending vertically when the container is set in place. However, Gall teaches a container bail system wherein the bail has a flattened portion which extends vertically when the container is set in place,

wherein the flattened portion provides an ergonomic gripping surface. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the bail of Drogos, as modified above, to have a flattened portion which extends vertically when the container is set in place, as taught by Gall so as to provide an ergonomic gripping surface.

With respect to claims 16 & 24, Drogos, as modified above, discloses the claimed invention except for the flattened portion of the bail extending horizontally when the bail is lifted. However, Gall teaches a container bail system wherein the bail has a flattened portion which extends horizontally when the container is lifted, wherein the flattened portion provides an ergonomic gripping surface. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the bail of Drogos, as modified above, to have a flattened portion which extends horizontally when the container is lifted, as taught by Gall so as to provide an ergonomic gripping surface.

### ***Response to Arguments***

13. Applicant's arguments filed on 11/11/05 have been fully considered but they are not persuasive. Specifically, Applicant argues that the boss spacing is 176 degrees. However, depending upon the point of reference, this measurement will vary drastically, wherein Examiner determined an angular measurement of approximately 140 degrees, via measurement techniques well known in the art. In addition, Applicant argues that Gall does not teach a flattened portion, wherein Fig. 1 CLEARLY shows a flattened


portion of the bail, wherein the bail does "twist" but only to transform into a flattened state, as is shown in the figure.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eugene Lhymn whose telephone number is 571-272-8712. The examiner can normally be reached on MTWT 6-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on (571)272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
JES F. PASCUA  
PRIMARY EXAMINER